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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,687	08/29/2003	Randolph S. Kohlman	2127B	9217

7590 11/04/2004
Milliken & Company
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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/651,687

Applicant(s)

KOHLMAN ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-83 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 73-83 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/3/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 75 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 75 recites "the interior surface of said bag has a maximum average Kawabata surface friction value of about 0.25." Claim 75 depends upon claim 73, which does not positively recite a bag structure. Claim 73 recites a textile composite that is used for constructing bags. Claim 75 is confusing because it is reciting limitations to an interior surface of a bag, but there is no bag structure in the claims. The Examiner will assume that the claimed "interior bag surface" is corresponding to the side of the textile composite where the polymer facing resides.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 73-83 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 37-50 of U.S. Patent No. 6,381,870 to Kohlman et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a textile composite comprising a textile substrate with a polymer facing and similar stiffness property values.

Claim Rejections - 35 USC § 102/103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 73-80 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Feitlowitz (U.S. Patent No. 3,809,573).

Feitlowitz discloses a method for imparting increased stiffness to woven and nonwoven fabrics (column 1, lines 15-27). Feitlowitz teaches thoroughly impregnating the fabric with a polymeric composition (column 2, lines 42-49). Although Feitlowitz does not explicitly teach the limitations of Kawabata stiffness values or Kawabata surface friction values, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. textile composition) and in the similar production steps (i.e. impregnating with a stiffening polymer) used to produce the fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed stiffness values would obviously have been provided by the process disclosed by Feitlowitz since the reference teaches adjusting the stiffness level (column 2, lines 50-69). Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claim 79, the textile substrate is polyester (column 2, line 72). With regard to claim 80, Feitlowitz teaches the polymer thoroughly impregnates the fabric (column 2, lines 45-46), so the polymer would form anchoring structures.

8. Claims 73-79 and 81 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cross et al. (U.S. Patent No. 5,534,298).

Cross et al. disclose a stiff woven fabric with a polymeric coating (Abstract). Although Cross et al. do not explicitly teach the limitations of Kawabata stiffness values or Kawabata surface friction values, it is reasonable to presume that said limitations are

inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. textile composition) and in the similar production steps (i.e. coating with a stiffening polymer) used to produce the fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed stiffness values would obviously have been provided by the process disclosed by Cross et al. since the reference teaches providing varying levels of stiffness (column 5, lines 27-39). Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claims 79 and 81, the woven textile substrate may be 150 denier polyester (column 5, lines 7-26) and the coating is pressed into the fabric interstices (column 6, lines 4-6).

Claim Rejections - 35 USC § 103

9. Claims 81 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feitlowitz in view of Scholz et al. (U.S. Patent No. 6,159,877).

Feitlowitz does not disclose the denier size of the yarn or the fabric to be warp knitted. Scholz et al. teach a fabric with a controlled stiffness useful as an orthopedic support material (column 2, lines 45-60). Scholz et al. disclose manufacturing a woven or warp knitted fabric (column 7, line 57 –column 8, line 21) with a yarn denier of less than 500 (column 8, lines 35-36). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use the fabric disclosed by Scholz

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et al. in the invention of Feitlowitz in order to provide a fabric material that is useful as an orthopedic support, as taught by Scholz et al.

10. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feitlowitz in view of Drelich et al. (U.S. Patent No. 3,889,024).

Feitlowitz discloses making a nonwoven fabric (column 1, line 45). However, Feitlowitz does not teach the length of the fibers. Drelich et al. teaches that nonwoven fabrics are conventionally made from fibers having a length between 0.5 and 2.5 inches (column 2, lines 36-40). Absent any specific teaching by Feitlowitz as to the length of the fibers, it would have been necessary, and therefore obvious to a person of ordinary skill in the art to use fibers with a length that is conventional in the art of nonwoven fabrics. Applicant's claimed fiber length range falls within what is conventional in the art for nonwoven fabrics.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

JRP

October 26, 2004

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER